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# THE CAPTURE OF ENEMY MERCHANT VESSELS AT SEA.

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IN an open letter, recently written by Mr. Charles Henry Butler to Captain Mahan of the United States Navy, Mr. Butler, among other things, combats the effectiveness, or military value, of the capture of privately owned ships and their cargoes upon the high seas, when sailing under the flag of an enemy. It has occurred to me, after reading this letter, and at the suggestion of Captain Mahan, that a fuller presentation of the subject, from the point of view of a belligerent, to whom the practice and principles of international law are not unknown, would be of value and interest—especially as, in my opinion, the freedom of private property from confiscation and capture on land is overestimated, and the military effect of such capture at sea not thoroughly understood. To prevent any misapprehension, I would add that I favor the repeal of any laws that give to naval officers any prize money from the capture of enemy merchant vessels at sea.

Whatever has been the doctrine of our country as to the capture of private property at sea, there is no doubt that the practice has been uniformly in its favor in all wars with nations having a mercantile marine.

In the War of the Revolution, in the quasi-war with France, in the War of 1812, as well as during the late war with Spain, the merchant vessels of the enemy were captured, without material restriction; upon the high seas. In the war with Mexico and in our civil war, the almost entire absence of an enemy mercantile marine upon the high seas prevented a similar practice. In the earlier wars mentioned, we were also considered at the same time one of the great neutral powers; but, notwithstanding this fact and

the precedent we established against ourselves by the capture of enemy merchant vessels, we used such belligerent rights vigorously for the purpose of prosecuting these wars to a successful end.

To-day, when we are gradually assuming, by the extension of our insular territories, and still more by our far reaching and increasingly complex external interests, the *rôle* of a great possible belligerent, it behooves us to examine closely all such questions, and to study them in their relation to ourselves, and to our future complications in the arena of the world. We should not hastily restrict our war powers.

It is interesting to review the conduct of the last great land war between two highly civilized European states—the Franco-German war—with respect to the question of the exemption of private property on shore from capture. During that war, it has been authoritatively stated that the French, with their overwhelmingly superior navy—a navy that caused a paralysis of German commerce—captured ninety merchant vessels, the value of which did not much exceed six millions of francs; while, during the same period, the German armies in France took private property, by methods of systematic, but unrecompensed, requisitions and contributions, valued at more than six hundred millions of francs, not counting the damage, more or less unavoidable, caused by the march and encampment of the armies in the field. This levying of contributions and requisitions was practically a confiscation of private property, in an orderly and well distributed manner perhaps, and duly claimed as among military necessities; but no more orderly and well considered, and no more necessary, than the capture of enemy merchant vessels and cargoes at sea, confiscated only after fair trial, by civil courts, presided over by duly appointed and trained judges, and with full opportunity for defense and appeal. Pillage, it is true, has been done away with; but when in its place comes well-ordered requisitions, without payment, for such supplies as cigars, beer and wines, to be furnished by the inhabitants of a town, it cannot be said that on land private property is completely exempt from capture. It must be understood, also, that the government of France did not attempt to reimburse the losers by this war, except very partially, and only in cases of extreme poverty and distress.

Von Moltke, who represents the probabilities of the future, as

well as the modern soldier of the immediate past, stated that he was, by no means, in accord with any manifesto which declared that the weakening of the regular military forces of the enemy constituted the sole legitimate procedure in war. "No," he said, "it is necessary to attack the resources of the government of the enemy, his finances, his railways, his provisions (stores) and even his prestige." How such objectives as these can be reached without disturbing directly and indirectly private property, it is difficult to see.

France did not suffer upon the sea in that war; but none the less was the loss of private property by the French people, by the heavy hand of the German invader, a cause for the termination of the war and for a universal cry for peace. While it is not proposed to advocate such severity, its influence for the prevention of wars cannot be ignored; and, compared to this severity, the capture of merchant vessels at sea, though effective, is certainly much less harsh.

Deliberately ordered devastation on land and the exemption, by ransom, of unfortified towns from bombardment, cannot even yet be considered as matters outside of the pale of civilized warfare.

So high a military authority as General Sheridan, in speaking of his operations in the Shenandoah Valley, treats of the whole question of the effectiveness of the destruction of private property in such a manner that I cannot refrain from quoting his remarks as not without pertinence. He says:

"I do not hold war to mean that lines of men shall engage each other in battle and material interests be ignored. This is but a duel, in which one combatant seeks the other's life. War means much more, and is far worse than this. Those who rest at home in peace and plenty see but little of the horrors attending such a duel, and even grow indifferent to them as the struggle goes on, contenting themselves with encouraging all who are able-bodied to enlist in the cause to fill up the shattered ranks as death thins them. It is another matter, however, when deprivation and suffering are brought to their own doors. Then the case appears much graver, for the loss of property weighs heavy with the most of mankind; heavier oftener than the sacrifices made on the field of battle. Death is popularly considered the maximum of punishment in war, but it is not; reduction to poverty brings prayers for peace more surely and more quickly than does the destruction of human life, as the selfishness of man has demonstrated in more than one great conflict."

Turning from the land to the sea, let us look upon the value of the merchant vessel and its cargo to the enemy as a bellig-

erent, and the consequent military value of its capture by the other belligerent.

In the first place, as to the ship: In modern maritime war between two naval powers, as soon as the declaration of war is known, there will be in most, if not all, cases, a cessation of the deep sea sailing trade, and the vessel that is likely to be captured—after the period of exemption generally allowed upon the outbreak of war—will be the merchant steamer, either a passenger or cargo carrier. Now, the merchant steamer has many possible belligerent uses in modern naval warfare. She may not be made into a vessel for the line of battle, it is true; but, with little or no material change, she may become a cruiser or a scout, or one of the many valuable and almost essential auxiliaries that are now demanded by maritime warfare. Transports, colliers, supply ships, torpedo depot vessels, floating machine shops, water distilling vessels, and telegraph cable layers and grapplers, are or can be made from innocent merchantmen.

As to the cargo, it also can be said to have a direct belligerent value to the enemy. In most, if not all, commercial countries, it would contribute directly the “sinews of war” to the enemy government through the customs duties paid from it. Our gold interest-bearing bonds of the period of the civil war, depended almost entirely for their value upon the duties levied by custom houses. War loans are not infrequently based upon customs receipts. There is no question as to the increased cost of war in modern times. Warlike appliances, afloat and ashore, cost much in a money sense in these times, and financial resources and superiority count vitally in modern warfare.

Unrestricted commerce affords an enemy these opportunities for increasing his revenue and resources, in such manner as to cause the evils of war to bear less hardly upon the people concerned than by any other method. These sources of revenue are great means for carrying on war; their forced cessation is a great measure for causing war to close. It may be urged that, as a neutral cargo in an enemy's ship is now free from capture, through our acceptance of the Declaration of Paris, the neutral cargo will still furnish customs revenue. But it must be remembered that, where the enemy ship is captured, the neutral cargo does not go on to its destination. It must go at first, and remain for some time, with the enemy ship. Hence, this detention, and the loss it

must entail, will cause, if the capture of enemy ships prevail, the avoidance of enemy ships as carriers of neutral cargoes.

It may be urged that a blockade would be more effective as a means of stopping trade and revenue. This is without doubt true, if a blockade can be made effective; but an effective blockade is a difficult thing, both as a military and commercial measure. If the enemy is continental in his geographical position, and connected by railways with continental systems of other countries, a forced cessation of external trade becomes most difficult, if not impossible, by blockade.

As to the *personnel* of the merchant vessels of the enemy, it must be remembered that, for a long time, these persons have been subject to detention as prisoners of war, as a sea resource of the enemy in war time. Although the skill of the able seaman is no longer found in the merchant steamers, as in times past, the crews of these steamers have sea knowledge and sea habits, and the engineers are skilled men, of the highest value on board of battleships and war vessels of all classes. Their detention from the service of the enemy would be a distinct military advantage. In international law, they are peculiar in their position. They are not exactly combatants—but, as an organized crew of a merchant vessel, they can nevertheless resist capture, and if captured they can rescue or recapture their vessel from the hands of the enemy. They may then be properly classed as part of the military or naval resources of the enemy, and, as such, subjects for maritime capture.

I will not do more than refer to the question of the throttling of the food supply of an insular or small isolated and overpopulated country, or to the effect of commerce destroying upon a country depending upon its manufactures and manufactured exports for its wealth and war sinews. Some of these countries depend upon their sea carriers for bringing them the raw materials for manufacture and for carrying the finished product to the great markets. At least one of these countries has so large a tonnage that it would be impossible to have this work done by the neutral vessels of any other country, and the transfer of that tonnage at or after the outbreak of war to a neutral flag, would be so colorable and suspicious as to justify a condemnation in many, if not all, cases before a prize court. We must not allow ourselves to be deceived by the successful "whitewashing" or transfer of

American vessels to the English flag in the civil war. The Confederate States could not bring such cases, for manifest reasons, before prize courts, and to avoid complications the Confederate cruisers, as a rule, allowed such vessels to go free.

It must be noted, also, that the principal maritime nations of the world have given a governmental character and subsidy to various large merchant steamer lines for present and ulterior service—the ulterior uses being of a belligerent character. These vessels, constructed under governmental supervision, with a view to naval uses, have often a large proportion of their officers and crew regularly enrolled as a part of a naval reserve. They are, nevertheless, until taken by their government into belligerent service, merely enemy merchant vessels, privately owned, and as such would be free from capture, if such property were duly exempted.

I will repeat what I said in the earlier part of this paper—that I am distinctly opposed to the payment of prize money, as such, for the capture of enemy merchant vessels on the high seas. I have endeavored to show that the practice should be continued upon its merits as a military measure; it should be rewarded only in the same way as other military measures are rewarded that are incidental to a maritime war. It certainly should have no greater reward, in a material sense, than that given to phases of naval warfare in which life, limb and reputation are jeopardized.

In conclusion, I will quote from the remarks made upon this subject by one of our most distinguished civilians and publicists, the late Mr. Richard Henry Dana of Boston. He says:

“Merchandise sent to sea is sent voluntarily, embarked by merchants on an enterprise of profit, taking the risks of war; its value is usually capable of compensation in money, and may be protected by insurance; it is in the custody of men trained and paid for the purpose; and the sea upon which it is sent is *res omnium*, the common field of war as well as of commerce. The purpose of maritime commerce is the enriching of the owner by the transit over this common field, and it is the usual object of revenue to the power under whose government the owner resides.”

CHARLES H. STOCKTON.